

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
DOCKET NO. 3:18-cv-00080-MOC-DSC

**HARVEY SMITH,**

Plaintiff,

Vs.

**CHARTER COMMUNICATIONS,**

Defendant.

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ORDER

**THIS MATTER** is before the Court on plaintiff's *pro se* Motion to Strike Answer to Amended Complaint.

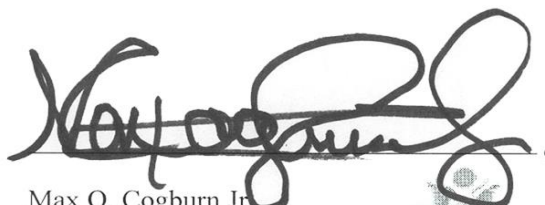
As a preliminary matter, the Fourth Circuit Court of Appeals has noted that motions to strike pursuant to Rule 12(f) are disfavored and should be granted infrequently. See Waste Mgmt. Holdings, Inc. v. Gilmore, 252 F.3d 316, 347 (4th Cir. 2001); see also Renaissance Greeting Cards, Inc. v. Dollar Tree Stores, 227 F. App'x 239, 247 (4th Cir. 2007). "Nevertheless, a defense that might confuse the issues in the case and would not, under the facts alleged, constitute a valid defense to the action can and should be deleted." 5C Charles Wright & Arthur Miller, *Federal Practice & Procedure* § 1380, 647 (3d ed. 2011). The decision to grant or deny a motion under Rule 12(f) is discretionary. Renaissance Greeting Cards, 227 Fed. App'x. at 246. In order to prevail on the motion, plaintiff must demonstrate that the matter at issue is both "prejudicial" and of the type "envisioned" by Rule 12(f). Brown v. Ins. for Family Centered Servs., Inc., 394 F. Supp. 2d 724, 727 (M.D.N.C. 2005).

Plaintiff has moved to strike all 15 of defendant's affirmative defenses. The key to affirmative defenses is fair notice, not plausibility. Whether defendant has provided evidence to support its defenses is inconsequential at this point. See Pracht v. Saga Freight Logistics, LLC, No. 3:13-CV-529, 2014 WL 1281189, at \*1 (W.D.N.C. Mar. 27, 2014) (denying motion to strike despite argument that allegations were "unsupported statements" where allegations had bearing on plaintiff's claim). Plaintiff has not shown the affirmative defenses have "no possible bearing upon the subject matter to the litigation," Simaan, Inc. v. BP Products North America, Inc., 395 F. Supp. 2d 271, 278 (M.D.N.C. 2005), or that the inclusion of these affirmative defenses is prejudicial to him in any way. See Brown, 394 F. Supp. 2d at 727. Therefore, the Court finds that plaintiff has not met his burden under Rule 12(f). Having considered plaintiff's motion and reviewed the pleadings, the Court enters the following Order.

#### **ORDER**

**IT IS, THEREFORE, ORDERED** that plaintiff's *pro se* Motion to Strike Answer to Amended Complaint (#28) is **DENIED**.

Signed: March 13, 2019



Max O. Cogburn Jr.  
United States District Judge